

INCIDENT REPORT

Copy

CASE #: 3L12000319		DATE: 9/22/2012		
Complainant/Victim: Click here to enter text. Ray Huffman, Police Officer #305 (SEE PDF BOOKMARKS TO NAVIGATE)				
Address: Lyman PD				
City: Lyman		State: NE	ZIP Code: 69352	
Phone # 1: Click here to enter text. Phone # 2: Click here to enter text.				
OFFENSE(S)				
Offense Description				Statute:
Dog running at large				Click here to enter text. 2-206
Dangerous Dog				2-217
Click here to enter text.				Click here to enter text.
Click here to enter text.				Click here to enter text.
INCIDENT DETAILS				
Incident Date: 09/22/12	Report Time: 1530	CLASSIFICATION: Animal Complaint <input checked="" type="checkbox"/> Criminal Case <input type="checkbox"/> Civil Case <input type="checkbox"/> Intelligence Report <input type="checkbox"/> CONFIDENTIAL REPORT		
Time Arrived: 1350	Time Cleared: 1506	Case Status: <input checked="" type="checkbox"/> CLOSED <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> OPEN / UNDER INVESTIGATION <input type="checkbox"/> Referred for Prosecution		
SUSPECT / SUBJECT / WITNESS/ OFFENDER / ALL OTHER				
Witness	Name: Skip Witt	DOB: Click here to enter text.	Address: Click here to enter text.	Phone: Click here to enter text.
Witness	Name: Betty Wilson	DOB: Click here to enter text.	Address: Click here to enter text.	Phone: Click here to enter text.
Choose an item.	Name: Click here to enter text.	DOB: Click here to enter text.	Address: Click here to enter text.	Phone: Click here to enter text.
Choose an item.	Name: Click here to enter text.	DOB: Click here to enter text.	Address: Click here to enter text.	Phone: Click here to enter text.
Choose an item.	Name: Click here to enter text.	DOB: Click here to enter text.	Address: Click here to enter text.	Phone: Click here to enter text.

INCIDENT REPORT**PROPERTY SECTION**

Choose an item.	Description: Click here to enter text.	NCIC Entry Choose an item. NCIC Number Click here to enter text.
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Choose an item.	Description: Click here to enter text.	NCIC Entry Choose an item. NCIC Number Choose an item.

Communications Center Call Log attached: YES NO N/A**Other Attachments:** YES NO

INCIDENT NARRATIVE:

Synopsis: While attempting to place a loose dog in its kennel, I was attacked by the dog and had to shoot it to defend myself. The dog died as a result of its injuries.

On Saturday, September 22, 2012, at about 1:45 p.m. I was leaving the LCC store from fueling the Dodge patrol car. I saw to the south, across Hwy 92, a large brown & black rottweiller dog running east. It crossed Jeffers and headed south towards the old high school.

I was already turning west, so I checked Ayala's residence and did not see a dog in their kennel. The dog had left the area of their house, so I stopped and knocked on the east door. I got no answer. I then drove around the block to the west and came back by the old high school. I saw the dog had went to the east side of Jeffers and was by trees north of that residence.

I saw the dog had no collar on it. I saw that the dog came to my car, so I had the Com Center check for a phone number for Ayala's. They advised they called a number and a female said the dog was not their's. I got out of my car and the dog came to me. I reached to touch it and let it sniff my hand. I then pulled my hand back and the dog jumped at me and I thought it was going to bite my left arm. I told the dog to get home. It stood and looked at me, then started to lunge at me again. I had my mace in my hand by then and I sprayed a short dose towards its nose. The dog turned and trotted back the way it had come.

I followed down the street and saw that the dog went across the grass towards 108 West N Street (Raul Ayala's), then ran around the kennel and started to go down the driveway as if to cross the Hwy and go to the Lyman LCC store. I drove into the driveway and got out to try and put the dog in its kennel. As I approached, I saw the dog back towards the kennel and I told it to back up. I was talking to it and got ready to reach the kennel and open the gate so the dog could go in.

Suddenly,, the dog jumped at me and its front paws caught me left arm and its head and teeth were coming for my face and throat. I pushed it off and yelled at the dog, it crouched and started to lunge again. I drew my pistol and shot the dog. After the first shot, it turned to its left, then came back toward me, so I shot again. The dog went down and bled by the front of the kennel. I holstered my pistol and notified the Com Center that I had been attacked and had to shoot the dog.

I saw three brass casings on the cement and saw that the dog was bleeding profusely on the concrete. I pulled the dog to the grass and washed off the blood as best I could so the family would not have to tend with dried blood. I contacted the Com Center and asked for assistance. I then drove to 3rd Avenue and notified Kim Robb, then went back to the Ayala residence

Deputy Jared Shepard arrived and I asked if he would do an investigation for the Sheriff's Office. I had him take photos of the dog and area, retrieve shell casings. I then told him that there were some witnesses to the dog running loose and its attitude towards me. He interviewed several citizens on Scuth Jeffers.

Just prior to Deputy Shepard arriving, a tan pickup drove up and a male who identified himself as a relative to Raul Ayala, got out. I told him what had happened. He called and said he had contacted Raul, who was in Scottsbluff. Raul asked to talk to me. I explained briefly what had happened, then gave the phone back to the relative.

The Com Center advised a trooper was in the area and did we need assistance. I advised yes. Trooper Jeff Wallace arrived and assisted in keeping the peace. After he arrived, a male and female drove to the Ayala residence, then walked over to where we were parked by Skip Witt's house. The female demanded to know who had shot the dog. I told her I did. The male asked to see my injuries. I told him I was not injured. He said that I had no right to shoot the dog then.

Shortly after, the Ayala's came home and we contacted Raul and his wife and kids in the yard east of their house. We answered as many questions as we could at the time. Deputy Shepard continued his investigation by interviewing the Ayala's.

I went to the police dept and completed my report.

NFI.....

END OF REPORT

Officer Signature #305 Ray Huffman



<http://www.webcitation.org/6SFTzTe1Z> (see note for citation)

Dog owner: Officer 'murdered dog in cold blood'

By MAUNETTE LOEKS Staff Reporter | Posted: Monday, September 24, 2012 3:35 pm

LYMAN — A police officer who shot a Rottweiler acted properly Saturday when a resident's dog attacked him, Lyman Police Chief Jeff Chitwood said Monday. The owner of the dog, Raul Ayala, says the officer "murdered my dog in cold blood."

By Sunday, Ayala and his family had started a Facebook page called "JusticeforBos Ayala." On the page, Ayala claims that a Lyman police officer "murdered" his dog by shooting it four times.

Ayala and his family had been gone from their home on a shopping trip for about 1½ hours when they were notified that their dog, Bos, had been killed.

"We rushed home as fast as we could," he said.

Ayala disputes Chitwood's official version of events and says he has the video to prove the officer acted without justification in shooting his dog.

A Lyman Police officer was on routine patrol when he came across Ayala's dog at a neighbor's residence shortly before 2 p.m. Saturday, Chitwood told the Star-Herald. The dog had been acting aggressively toward another dog after apparently getting out of his kennel.

According to the officer, the resident of the home had been attempting to get the Rottweiler away from her dog when the officer stopped. As the officer attempted to get the Rottweiler to leave the other dog and the residence, Chitwood said, the Rottweiler lunged at him and tried to bite him.

The officer continued to try to direct the dog to its residence and its kennel. Once at its residence, the dog lunged at the officer a second time, attempting to bite the officer in the face. The officer shot the dog when it attacked him.

Chitwood said the dog continued to lunge at the officer, who discharged his service weapon another two times until the dog died. The officer "thought of the family," he said, removing the dog and blood from the sidewalk of the residence and contacted family members to tell them of the incident.

There were eyewitnesses to the dog threatening the other dog and the officer, he said.

"If the dog had been in his kennel and would not have been acting aggressively, none of this would have



Dog owner: Officer 'murdered dog in cold blood'

Bos, a Rottweiler, is pictured lounging in his kennel. On Saturday, a Lyman Police officer shot the dog three to four times.

Lyman Police Chief Jeff Chitwood said the officer acted properly. The owner of dog says the officer "murdered" his pet.



<http://www.webcitation.org/6SFTzTe1Z> (see note for citation)

ever happened,” Chitwood said, adding that his officer’s safety and the safety of the public came first in a situation involving an aggressive dog. A Village of Lyman ordinance prohibits dogs from running loose and allows action against an aggressive dog.

Ayala, who purchased his dog Bos from a friend about 18 months ago, said his dog didn’t act aggressively toward the officer or others. Though the family calls him a “security guard,” he said, the dog simply alerted the family when strangers were at the home or other events around the home.

“He was a good dog,” he said, saying he walked the dog daily and enjoyed taking him to a local lake. “He was a good family dog. He would play with his toys. He would play with our kids. He acted just like a puppy.”

Video from security cameras at the Ayala home shows the dog getting out of the kennel after the door had not been latched properly. Ayala had put the dog in the kennel himself.

“It’s my fault,” he said. “I didn’t latch it. Dogs accidentally get loose sometimes, but he didn’t wander too far from my house.”

Ayala and his family had outfitted their home with security cameras in response to harassment from other individuals, he said. The owner of the Rottweiler says his dog remains on video most of the time that he had been out of the kennel.

Ayala did not provide the Star-Herald with a copy of the video, but showed footage from the video.

In one portion of the video shown to the Star-Herald, the dog is across the street at a local convenience store, sitting in shade. People come in and out of the store, getting in vehicles, and the dog does not seem to act aggressively.

The dog was at the convenience store when the officer spotted him, Ayala said. The video shows the dog at the store, the officer knocking on Ayala’s door and talking to a neighbor. The video does contain timestamps, he said.

“My dog was scared of him,” he said. “You can see my dog try to run to his kennel in the back door when the officer shoots him in the rear end.”

In video presented to the Star-Herald, the dog is shot for the first time off camera. The dog comes on camera, staggering after having been shot. The officer follows, shooting the dog another two or three times. As the dog is shot, he is spinning around, not lunging at the officer. Blood spatters onto the sidewalk as the dog spins.

“He (the officer) was mad. The video shows him hauling (expletive). If he was afraid of the dog or something, he should have gotten someone who could handle the dog. He acted unprofessionally,” Ayala said. “It took just six minutes for him to end my dog’s life.”

The Ayala family took the dog to a local veterinarian, who conducted a necropsy. The Ayala family also will be cremating the dog.



<http://www.webcitation.org/6SFTzTe1Z> (see note for citation)

Copies of a necropsy provided by Ayala from the veterinarian indicate the dog suffered five puncture wounds across his body. Two bullet fragments were removed from the body. Wounds were in the upper left front leg, right pectoral area, two wounds were in the thorax and one wound, caused by a "bullet trail" was present on the right cheek.

Ayala has not contacted the Lyman Police Department personally, Chitwood said Monday morning.

"If they have a concern (with the actions of a police officer), they can talk to me, the police chief, directly" he said. "It puzzles me that they want to try this in the media without even discussing it with administration."

Ayala acknowledged that he had not contacted the Lyman Police Department on Monday. However, he said, officials know that the family is upset. In his conversations with the neighbors, he said, he was told the dog was not acting aggressively toward other dogs, residents or the officers.

"Honestly, I don't trust them (the police). They are only covering their own (expletive)," Ayala said.

Chitwood said the officer contacted the Scotts Bluff County Sheriff's Department and the Nebraska State Patrol, which reviewed the incident. The officer is also a deputy with the sheriff's department.

He said he is unaware of Ayala providing the video to either reviewing agency and it has not been provided to him.

"My understanding is that all statements from witnesses have supported the officer's statements," Chitwood said.

Ayala said he plans to contact an attorney to see if he can take action against the Lyman Police Department. He had been seeking to file a complaint with another agency as of press time.

Ayala provided a short video of the incident to the Star-Herald. The video has since been removed from YouTube under their 'Terms of Service' agreement.



Courtesy photo by Tony Koerner



Dog owner: Officer 'murdered dog in cold blood'

By MAUNETTE LOEKS
Staff Reporter

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DOG: Owner says officer 'murdered dog in cold blood'

Continued from page 1

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Photo courtesy of Paul Ayala

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ling funds provements

I see something more global in perspective.

Councilman Larry Gibbs proposed referring the issue to the public safety committee to consider.

"There is still some debate about what the share is and how do we pay for it?" Gibbs said. "I don't think we are opposed to paying our share, but the question is 'what is that share?'"

Furland agreed, saying that a proposed ordinance that asks each of the municipalities to contribute money collects more than the \$349,000

See GERING, page 3A

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There were eyewitnesses to the dog threatening the officer.

See DOG, page 3A

Gering Pageant deemed a success



Village of Lyman Employee Complaint form:

Please be advised that this is only a complaint form, no action can or will be taken at this time. This form is for Village of Lyman Board of Trustees informational purpose. You will be advised of any action, if any is to be taken regarding this complaint. Please be as detailed as possible when filling out this form. You may be asked to speak with the Board of Trustees at a later date if they find it necessary.

Date: 10-5-12

Complaint regarding employee: Ray Huffman

On Sept. 22, 2012 Officer Ray Huffman came into our property claiming he was being lunged & attacked by our 18 mth old Rott and shot him from behind 21 times to death. We also have a witness stating different and have it all on video. None of what he said shows on video. We feel Justice needs to be done for Bos. Huffman should have contacted us or the Village or animal control before shooting our baby dog to death. This situation should have been handled more professional. We feel the Village of Lyman needs to pay attention who they put out to patrol this little town not just pick out anybody. He has caused our family so much pain & heartache you can even imagine.

Justice for Bos !!

" "

Signed: Ron Ayl.

Witness: _____



Kovarik, Ellison & Mathis, PC

ATTORNEYS AT LAW

LELAND K. KOVARIK
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JAMES M. MATHIS

AUDREY M. ELLIOTT
MARK L. KOVARIK**
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Please direct all
Correspondence to
Gering Office

October 9, 2012

KNEB
KDUH
Star Herald
Gering Citizen
Mitchell Index
Gering Courier
Hometown Family Radio

VIA EMAIL

RE: Village of Lyman Police Department; Ayala Dog

Dear Members of the Press:

I represent the Village of Lyman and its Board of Trustees. I have been apprised of an incident that took place on September 22, 2012 that involved an officer of the Village of Lyman police department and a residents' animal. I have read a few articles about the unfortunate shooting of the Ayala dog and have been present for one interview of the Officer in Charge of the Lyman Police Department. I have also viewed a live news report that involved a video as supplied by the Ayala family for airing. (Note: I am writing to you to provide a response to the reports as well as to clarify some facts so that the public is well-informed about the actions our officer took on September 22, 2012.)

Officer Ray Huffman was working on September 22, 2012 in his official capacity as a Lyman police officer. He was on patrol when he saw a large brown and black Rottweiler dog that was not accompanied by his owner nor on any leash. Officer Huffman was near the Ayala residence and did not see that their dog was in its kennel. He knocked on the door of the Ayala residence, but no one answered. He contacted the Communication Center to obtain a phone number for the Ayala residence. The Communication Center used a phone number that was believed to be the Ayala's and contacted a female who stated that it was not her dog. The Communication Center also tried another number to contact the Ayala family. Officer Huffman approached the dog with his hand out for the dog to sniff, but the dog growled at him and made a lunging motion toward Officer Huffman and connected by grabbing Officer Huffman's arm. Officer told the dog to return home and the dog lunged at him a second time. Officer Huffman deployed pepper-spray to the animal and the dog appeared to walk toward his dog cage, then started down the driveway, but was met by Officer Huffman in his patrol car. Officer Huffman attempted to place the dog in its kennel rather than confiscating the animal and holding it in

shelter until the owners claimed the missing dog. Upon Officer Huffman's attempt to place the dog in its kennel, while trying to coax the dog into its kennel, it again lunged toward Officer Huffman with his front paws and his teeth growling coming to the officer's face. Officer Huffman yelled at the dog while pushing it off. The dog lunged again so he used his left arm to defend himself while grabbing his duty weapon. He fired one round in the dog and the dog turned to its left only to turn around again and lunge for another time at our officer. Officer Huffman fired three more times, killing the animal and stopping the threat to his safety and the safety of the public. He immediately contacted the Communication Center about him being attacked and that he shot a dog. The Sheriff's office and the Nebraska State patrol arrived for assistance to help assess the situation and obtain statements. He also contacted his supervisor, the Officer in Charge of the Lyman Police Department and advised him of the situation. He then pulled the dog onto the grass and washed away the blood as he did not want the family to see the blood. Four shell casings were collected. He left the Ayala residence to notify the Village Clerk and returned to the Ayala residence to answer questions from the Sheriff's office.

On October 5, 2012 the Village of Lyman received a formal complaint about Officer Huffman and his experience, or in the Ayala's opinion, his lack of experience, in handling the Ayala's dog that had been running at large. The Ayala's also referenced that Officer Huffman should have responded to animal control and that Officer Huffman should have contacted them. However, the complaint does not request what they wish to happen, other than to say, "We feel Justice needs to be done for Bos." Finally, there is a Facebook request for a petition to have Officer Huffman immediately removed from his position with the Lyman Police Department.

Some points of interest:

- There were witnesses to the dog lunging and grabbing Officer Huffman's arm upon his first contact on September 22, 2012;
- There is a witness who saw Officer Huffman grab his pepper spray to try to deflect the dog's attack;
- There were witnesses who stated that this was not the first time the dog was aggressive to others;
- There is a video of when the dog finally laid to rest. There was one (1) shot fired in this video; and then you see Officer Huffman tracking the dog with his gun after it has been shot;
- Such video was uploaded on YouTube and Facebook prior to the Star Herald and KDUH airing the video.
- There have been reports that Mr. Ayala has a total of eight (8) cameras surrounding his property, but only one camera angle has been released with editing by Mr. Ayala;
- Mr. Ayala showed a representative of the Star Herald another angle of the dog, although it has not been released for review by Village of Lyman or the Sheriff's office;
- Officer Huffman is not required to ask for assistance, but did so anyway;
- Officer Huffman is also a Lieutenant for the Sheriff's Office and one of the firearms instructor and has been a member of the Scotts Bluff County Sheriff's department for more than 20 years; and,
- Officers of Lyman are to enforce the Village's ordinances, one of which regards animals at large, the responsibility of the officers and the penalties for the animal owner

The Village of Lyman supports the actions taken by Officer Huffman and will defend such actions unless it is proven that Officer Huffman acted negligently in his duties as a police officer for the Village of Lyman.

Should you have any questions for me, the Village of Lyman and/or the Lyman Police Department, please contact me.

Sincerely,

KOVARIK, ELLISON & MATHIS, P.C.



Audrey M. Elliott

E-mail: aelliott@neblawyer.com

Cc: VoLPD, SBSO

Kovarik, Ellison & Mathis, PC

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JAMES W. ELLISON*
JAMES M. MATHIS

AUDREY M. ELLIOTT
MARK L. KOVARIK* *
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HANS J. HOLTORF
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KIMBALL OFFICE

109 SO. WALNUT
KIMBALL, NE 69145
(308) 235-8800

Please direct all
Correspondence to
Gering Office

October 15, 2012

Mr. Raul Ayala
P.O. Box 121
Lyman, NE 69352

RE: Written Complaints Village of Lyman Police Department Response

Dear Mr. Ayala:

As you are aware, I represent the Village of Lyman and the Village of Lyman Police Department. I am aware that you have filed a Complaint Form with the Village of Lyman Police Department on or about October 5, 2012. Attached is a letter from our Officer in Charge, Jeff Chitwood, addressing some of your concerns with certain requests from you to engage in an investigation of Officer Huffman based upon your complaint that appears to request that we engage in an investigation of his actions as a police officer for the Village of Lyman. Please note that Officer Chitwood is requesting that you provide the requested information within seven (7) days of you receiving this letter so that if the investigation is what you are requesting, such investigation can take place sooner than later.

I was also approached by Mr. Don Miller out of Sidney, Nebraska last week stating that you may be using him as your legal representative. Should you actually hire Mr. Miller as your attorney, please have Mr. Miller contact me so that in future correspondence may be sent to him directly.

Sincerely,
KOVARIK, ELLISON & MATHIS, P.C.



Audrey M. Elliott
Email: aelliott@neblawyer.com

AME/lms
03-0861.20
Cc: Officer Chitwood- Lyman PD
Mr. Don Miller

Village of Lyman Police Department

"Protecting our Community with Pride and Integrity"

414 Jeffers Avenue/P.O. Box 301

Lyman, Nebraska 69352

Telephone: (308) 787-1444 Fax: (308) 787-1403

24hr Dispatch: (308) 436-6666

LymanPD@actcom.net

RE: Complaint form filed against Village of Lyman Police Officer Huffman.

Dear Mr. and Mrs. Raul Ayala,

First off I would like to express my sincere and deepest sympathy for the loss of your dog and how I know he was a deeply loved member of your family. I too am a dog lover and I am very fond of the AKC working dog breeds and of the Rottweiler breed more specifically. I currently own dogs and I have owned both a male and a female Rottweiler in the past and I find them to be an exceptional breed, but certainly one in which the dog must have very responsible owners in order for both the dog and the owners to have a lifelong, quality human / animal relationship.

I have received and reviewed your complaint against Officer Ray Huffman dated October 5, 2012. In it I can see how your feelings have been hurt by the unfortunate series of events that occurred on September 22, 2012. However as the Officer in Charge of the Lyman Police Department and a member of the legal community I must consider facts, evidence, law and police procedure currently in place at the time of an event when conducting any investigation.

Your complaint is vague in that you do not request what it is you think this agency or its legal representatives of the Village Board should do. Your complaint does not state what you feel Officer Huffman did wrong. You say you have a witness to the event, but do not provide the name or contact information. You say you have video of the incident that disputes the officer's report, the statements of witnesses and another agencies investigation, but you have not provided it to this agency or to the Sheriff's Office for review. You have told Deputy Shepard of the Sheriff's Office that you have a security system consisting of eight (8) video cameras, but you have not provided that video footage to law enforcement.

In your opinion, you feel Officer Huffman should have contacted you, the Village, or Animal Control. I can tell you that attempts were made to contact you. Officer Huffman knocked on your door, but no one answered. The Communications Center tried a phone number shown to be a contact number for you in their Database, but the woman that answered stated it was not her dog, and Officer Huffman is a certified law enforcement officer of more than twenty years experience and on the date in question he was the representative of the Village of Lyman, and one of his duties by village ordinance and state law is as an Animal Control Officer.

You state you feel "Justice" needs to be done for your pet, but do not state what you feel Officer Huffman did in violation of state law, village ordinance or department policy.

You claim that Officer Huffman shot your dog four (4) times and to my knowledge this is not in dispute, however the video you have posted on the internet only shows the final shot. After that the Officer is just tracking or "watching" the dog and realizing the he can stop firing at this point because

the threat to him is done at this point. Also, video you have posted on the internet will not be considered as evidence for this investigation as it is clear that is has been edited by you and is incomplete. That determination has already been made by me and two different law firms that represent the Village of Lyman.

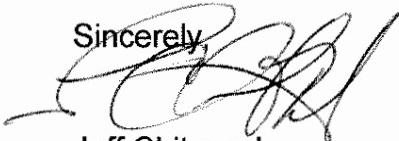
Both I and our legal counsel will be happy to consider your evidence and review it for possible violations of criminal law or violations of department policy, but before that can be done you must provide the following:

- 1) DVD copy off all video you wish to have us review for possible violations. (If you have multiple working cameras then you should provide video from all cameras for a period of time starting from before your dog got out of its kennel, to after the incident you wish to question was concluded.)
- 2) Names, addresses and current working phone numbers of all witnesses you wish to be a part of this internal investigation.
- 3) Any other information you feel is factual and of an evidentiary nature that you wish to have considered in our investigation.

You have seven (7) days from the date you receive this letter to provide that information to me. You may leave it in a sealed envelope with either the office staff of the Village of Lyman or me. Once we have received the information you wish to have considered I and our legal counsel will review this evidence, conduct interviews as necessary and compare that information against Village Ordinance, state law and department policy. If violations are found then internal discipline may be recommended to the Village Board.

Again, I would like to express our condolences in your loss and look forward to your full cooperation in this matter.

Sincerely,



Jeff Chitwood
Officer in Charge
Lyman Police Department

October 18, 2012

Amanda Kay Baker
3642 Platte Street
Torrington, WY 82240
307-575-2226

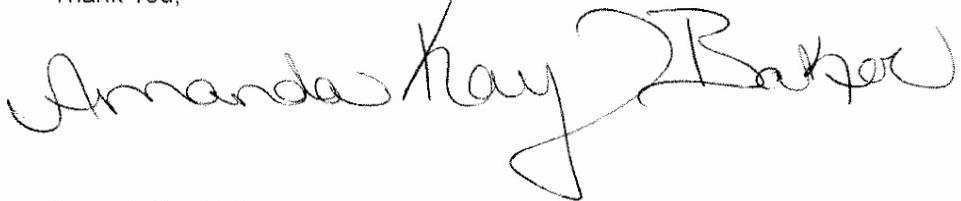
To Whom It Concerns,

My name is Amanda Kay Baker, I was a employee of Animal Health Cener in Scottsbluff, NE for just under a year, my employment ended there in February 2012. I was a Vet Tech for the Animal Health Center.

In my time working there I dealt with a Rott named Bos. Bos was a big teddy bear, he was scared of his reflection in the trash can and the metal table legs. He was a big baby. Never did I ever feel in danger while he was in my care. Raul Ayala was Bos's owner. Raul would come in with Bos and his son, who at the time couldn't be more than 3 years old and Bos was nothing but gental with the little boy.

I dealt with a lot of animals at the Animal Health Center and Bos is one that I will remember as well as one of my favorites. What happen to Bos and his family is insane.

Thank You,



Amanda Kay Baker

 MILLER LAW OFFICE

DONALD J.B. MILLER
1113 TENTH AVENUE
P.O. Box 15
SIDNEY, NEBRASKA 69162

ATTORNEY AT LAW
TELEPHONE: (308) 254-2600
EMAIL: Don@DonMillerLaw.com
FACSIMILE: (308) 254-7047

November 3, 2012

Mr. Raul Ayala
108 West N Street
P.O. Box 121
Lyman, Nebraska 69352

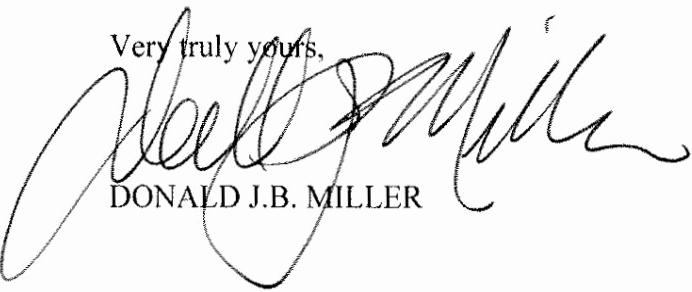
In re: Village of Lyman

Dear Raul:

I have enclosed a copy of the letter I sent to Ms. Elliott the attorney for the Village of Lyman. I will start a draft of the claim against the Village. I have the Animal Health Center report which we will include in the claim. Do you have any additional documentation on Bos' pedigree, his market value and background? For example, where you purchased Bos, the amount paid, etcetera. Did you intend to breed him in the future? Also, I want you to be thinking about damages for trespass and emotional distress. Also, the disciplinary action we want the Village to take against the officer.

I would prefer to hold off on filing a claim until after Jim has had a chance to interview the witnesses in this case. Please call or email me if you have questions or concerns.

Very truly yours,



DONALD J.B. MILLER

DJBM

BEFORE THE SCOTTS BLUFF COUNTY COMMISSIONERS
SCOTTS BLUFF COUNTY, NEBRASKA

IN THE MATTER OF THE WRONGFUL)
DESTRUCTION OF AYALA FAMILY DOG) WITHDRAWAL OF CLAIM
)

COMES NOW Raul and Lupita Ayala of 108 West N Street, the Village of Lyman, Scotts Bluff County, Nebraska and on behalf of themselves and their minor children hereby withdraw their Claim for money damages against Scotts Bluff County, Nebraska filed on or about January 11, 2013, for the reasons that Scotts Bluff County, Nebraska has not paid the Claim, denied the Claim or otherwise acted on the Claim and more than six months have passed since the Claim was filed. Claimant further notifies Scotts Bluff County, Nebraska that they intend to pursue a civil action for the destruction of "Bos", the family dog, for violation of Raul and Lupita Ayala's rights including but not limited to the wrongful entry onto the Ayala property, illegal seizure of property, excessive force and violation of constitutional and civil rights and for damages in accordance with law.

WHEREFORE, Claimant Raul and Lupita Ayala withdraw from consideration the pending January 11, 2013, Claim against Scotts Bluff County, Nebraska.

Dated this _____ day of July, 2013.

Raul Ayala, Claimant

Lupita Ayala, Claimant

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

Raul Ayala, being first duly sworn upon oath, deposes and states that he is one of the Claimants in the above-captioned matter and on his own behalf and on behalf of his minor children hereby withdraws the pending Claim, knows the contents of this document, that the facts stated are true to the best of his knowledge and belief.

Raul Ayala

SUBSCRIBED and sworn to before me this ____ day of January, 2013.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

Lupita Ayala, being first duly sworn upon oath, deposes and states that she is one of the Claimants in the above-captioned matter and on her own behalf and on behalf of her minor children hereby withdraws the pending Claim, knows the contents of this document, that the facts stated are true to the best of her knowledge and belief.

Lupita Ayala

SUBSCRIBED and sworn to before me this ____ day of January, 2013.

Notary Public

BEFORE THE VILLAGE OF LYMAN, LYMAN, NEBRASKA

IN THE MATTER OF THE WRONGFUL)
DESTRUCTION OF AYALA FAMILY DOG) WITHDRAWAL OF CLAIM
)

COMES NOW Raul and Lupita Ayala of 108 West N Street, the Village of Lyman, Scotts Bluff County, Nebraska and on behalf of themselves and their minor children hereby withdraw their Claim for money damages against the Village of Lyman filed on or about January 11, 2013, for the reasons that the Village of Lyman has not paid the Claim, has not notified Claimants of a denial of the Claim or otherwise acted on the Claim and more than six months have passed since the Claim was filed. Claimant further notifies the Village of Lyman, Nebraska that they intend to pursue a civil action for the destruction of "Bos", the family dog, for violation of Raul and Lupita Ayala's rights including but not limited to the wrongful entry onto the Ayala property, illegal seizure of property, excessive force and violation of constitutional and civil rights and for damages in accordance with law.

WHEREFORE, Claimant Raul and Lupita Ayala withdraw from consideration the pending January 11, 2013, Claim against the Village of Lyman, Nebraska.

Dated this _____ day of July, 2013.

Raul Ayala, Claimant

Lupita Ayala, Claimant

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

Raul Ayala, being first duly sworn upon oath, deposes and states that he is one of the Claimants in the above-captioned matter and on his own behalf and on behalf of

his minor children hereby withdraws the pending Claim, knows the contents of this document, that the facts stated are true to the best of his knowledge and belief.

Raul Ayala

SUBSCRIBED and sworn to before me this ____ day of July, 2013.

Notary Public

STATE OF NEBRASKA)
)
) ss.
COUNTY OF SCOTTSBLUFF)

Lupita Ayala, being first duly sworn upon oath, deposes and states that she is one of the Claimants in the above-captioned matter and on her own behalf and on behalf of her minor children hereby withdraws the pending Claim, knows the contents of this document, that the facts stated are true to the best of her knowledge and belief.

Lupita Ayala

SUBSCRIBED and sworn to before me this ____ day of July, 2013.

Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

RAUL AYALA, and LUPITA AYALA, and)	CASE NO. CI 14-442
MARC AYALA,ADRICK AYALA, and KASON)	
AYALA, minor children, by and through their)	
guardians and next friends, Raul Ayala)	
and Lupita Ayala,)	
)	
Plaintiffs,)	ANSWER OF DEFENDANT
)	SCOTTS BLUFF COUNTY,
)	NEBRASKA
vs.)	
)	
VILLAGE OF LYMAN, NEBRASKA, and)	
SCOTTS BLUFF COUNTY, NEBRASKA,)	
)	
Defendants.)	

COMES NOW the Defendant named in Plaintiffs' Complaint as "Scotts Bluff County, Nebraska" ("County"), and for its Answer to such Complaint denies, admits, or alleges as follows:

1. Defendant County neither admits nor denies paragraphs 1 and 2 of Plaintiffs' Complaint, but places them on strict proof thereof.
2. Defendant County admits paragraph 3 of Plaintiffs' Complaint.
3. Defendant County admits the County of Scotts Bluff, Nebraska, is a political subdivision denominated by law in reference to paragraph 4 of Plaintiffs' Complaint, but Defendant affirmatively asserts that it has not been identified or served in its proper legal name as a party herein.
4. Defendant County admits the Village of Lyman, Nebraska, has a police department and may or may not employ certain off-duty officers of Defendant County to fill its police ranks as needed to fulfill its statutory duties as a Village as referenced in paragraph 5 of Plaintiffs' Complaint.
5. Defendant County denies the allegations contained in paragraph 6 of Plaintiffs' Complaint insofar as it alleges Village Officer Ray Huffman was employed by or acting in his capacity as a deputy sheriff for Defendant County as to the events alleged by Plaintiffs.
6. Defendant County denies the allegations contained in paragraph 7 of Plaintiffs'

Complaint insofar as it alleges Village Officer Jeff Chitwood was employed by or acting in his capacity as a deputy sheriff for Defendant County as to the events alleged by Plaintiffs.

7. Defendant County admits the allegations contained in paragraph 8 of Plaintiffs' Complaint.
8. Defendant County denies each and every allegation contained in paragraphs 9, 10, 11, 12, 13, and 14 of Plaintiffs' Complaint, except as may be otherwise admitted herein.
9. Defendant County admits a tort claim was filed with Defendant County as alleged in paragraph 15 of Plaintiffs' Complaint apparently in error, inasmuch as no deputy sheriff on duty or within the scope of his employment with Defendant County at such time was involved in shooting Plaintiffs' unleashed, at large Rottweiler dog on September 22, 2012, in the Village of Lyman, Nebraska. Defendant County admits that Defendant County took no action upon and has not allowed payment for the erroneously filed tort claim referenced above.
10. Defendant County incorporates paragraphs 1 through 9 herein in response to Plaintiffs' allegations in paragraph 16 of Plaintiffs' Complaint incorporating their paragraphs 1 through 15. Further, Defendant County denies any other paragraphs or allegations made therein not specifically admitted heretofore.
11. Defendant County denies each and every allegation contained in paragraphs 17, 18, 19, 20, 21, 22, 23, and 24 of Plaintiffs' Complaint.
12. Defendant County denies each and every allegation contained in Plaintiff's Complaint not otherwise admitted herein, except to the extent that any such admission would be against the interests of Plaintiffs.
13. Defendant County alleges Plaintiffs' Complaint fails to state a claim upon which relief can be granted against this Defendant under Neb. Ct. R. Pldg. §6-1112(b)(2) and (6).
14. Defendant County alleges that Plaintiffs' claims and damages are subject to the doctrine of avoidable consequences.
15. Defendant County alleges it is entitled to sovereign immunity from suit under the Political Subdivisions Tort Claims Act, for reasons including but not limited to

reason that Plaintiffs' written claim does not qualify as a valid "tort claim" under Neb. Rev. Stat. §13-903(3), as the persons alleged to have been negligent were not acting within the scope of their employment with the political subdivision of the County at the time of the events described in such claim.

16. Defendant County alleges Plaintiffs' own negligent actions, including other intervening actions not under the control of this Defendant, were the cause and/or contributing cause of the death of Rottweiler "Bos," Plaintiffs' dog, in an amount sufficient to bar any recovery by them.
17. Defendant County alleges Plaintiffs' demands for relief in the form of attorney's fees, and interest on an unliquidated claim, are not supported by law, and should be stricken, and alleges that Plaintiffs are not entitled to any of the relief sought in their Complaint.
18. Defendant County alleges filing this action against Defendant County in the District Court of Scotts Bluff County for the loss of a Rottweiler dog, allegedly without AKC registration and AKC registered pedigree, is frivolous, including their demand for attorney's fees in this matter, when Plaintiffs knew that the County had no involvement in this incident as a matter of law.

WHEREFORE, Defendant County prays Plaintiffs' Complaint be dismissed at their costs, and Defendant County recover its costs and fees incurred herein as allowed by this Court, pursuant to Neb. Rev. Stat. §25-824 or other applicable law.

Dated this 6th day of August, 2014.

SCOTTS BLUFF COUNTY,
NEBRASKA, Defendant.

BY:


Vincent Valentino, #14288
Brandy Johnson, #23323
CenterStone
100 N. 12th Street, Suite 200
P.O. Box 84640

 MILLER LAW OFFICE

DONALD J.B. MILLER
1113 TENTH AVENUE
P.O. Box 15
SIDNEY, NEBRASKA 69162

ATTORNEY AT LAW
TELEPHONE: (308) 254-2600
EMAIL: Don@DonMillerLaw.com
FACSIMILE: (308) 254-7047

August 13, 2014

Mr. Raul Ayala
P. O. Box 121
Lyman NE 69352

RE: Ayala vs Village of Lyman, Nebraska and Scotts Bluff County, Nebraska

Dear Raul:

Enclosed please find copies of the following documents:

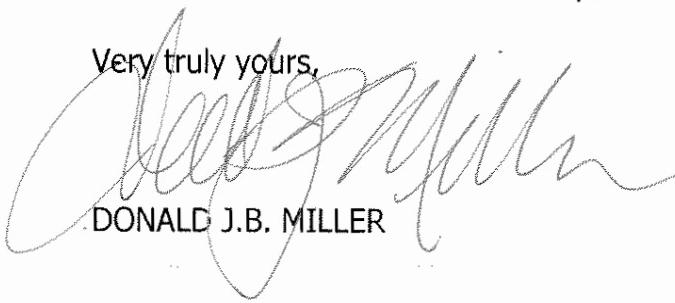
1. Answer of Scotts Bluff County, Nebraska, Defendant
2. Interrogatories and Requests for Production of Documents

Please review the enclosed documents and prepare your rough responses to the Interrogatories and gather the documents and items requested in the Production of Documents.

We are required to have our responses to the requesting party within thirty (30) days from the date requests and interrogatories were received. Please provide this information to the office so the same may be put in proper legal form within the time frame allowed.

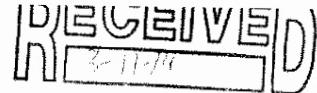
If you have questions or concerns, please contact the office. Thank you.

Very truly yours,



DONALD J.B. MILLER

DJBM/bjs



IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

RAUL AYALA, and LUPITA AYALA, and)	CASE NO. CI 14-442
MARC AYALA, ADRICK AYALA, and KASON)	
AYALA, minor children, by and through their)	
guardians and next friends, Raul Ayala)	
and Lupita Ayala,)	
Plaintiffs,)	DEFENDANT SCOTTS BLUFF
)	COUNTY, NEBRASKA'S
)	INTERROGATORIES AND
vs.)	REQUESTS FOR PRODUCTION
)	OF DOCUMENTS TO
VILLAGE OF LYMAN, NEBRASKA, and)	PLAINTIFFS (SET I)
SCOTTS BLUFF COUNTY, NEBRASKA,)	
)	
Defendants.)	

TO: THE PLAINTIFFS, RAUL AYALA and LUPITA AYALA, and MARC AYALA, ADRICK AYALA, and KASON AYALA, and their attorney, Donald J.B. Miller, Miller Law Office, 1113 Tenth Avenue, P.O. Box 15, Sidney, NE 69162-2059

You are hereby notified to answer separately and in writing, under oath, pursuant to Neb. Ct. R. Dis. §6-333 and §6-334, within thirty days from the date of service upon you the following Interrogatories and Requests for Production of Documents.

These requests are deemed continuing, and, if the Plaintiffs or their attorney discover any additional information as to matters inquired of in these requests between the time the answers are made and the date of trial, supplemental answers should be made informing the Defendant through its attorney, as to the newly discovered information prior to trial, or providing documents as applicable.

INSTRUCTIONS

Document. The term "document" shall mean and include all writing of every kind, whether handwritten, printed, photocopied, or any other form, regardless of the form in which it exists. To the extent applicable the term "document" shall also include photographs and any other visual aid.

Identify or Identity in reference to documents. The term "identify" or "identity" when used in reference to a document means to provide the date; identity of author and addressee; type of document (e.g., letter, chart, etc.); its present location and custodian;

any other description necessary to enable identification and location of said document; and, either a summary of its pertinent contents or a copy of the document itself shall be provided.

Identify or Identity in reference to individual person or entity. The term "identify" or "identity" used in reference to an individual person or entity means to state his/her or its full name and present or last known address and phone number; and where applicable his/her present or last known position or business affiliation, position or business affiliation at the time of the matters pertinent to this lawsuit; and, if a corporation or entity, the name of the officer or officers with knowledge of the matters which are the subject matter of this lawsuit or of the particular interrogatory or request.

You and Your. The terms "you" and "your" refers to the party upon whom this discovery is served, and includes not only the individual or entity, but also him/her, his/her attorney, employee, and agents. Further, you are required to exercise reasonable diligence to obtain relevant information and documents even if not immediately in your possession, where by exercise of reasonable diligence you could obtain such documents or information.

Surveillance Video. The term "surveillance video" shall mean any kind of video and/or home video recording, regardless of the format in which it exists.

Incident and Accident. The term the "incident" and "accident" shall refer to the shooting of Plaintiffs' dog by law enforcement that occurred on September 22, 2012, at the Plaintiffs' residence in the Village of Lyman, Nebraska.

INTERROGATORIES

INTERROGATORY NO. 1: Identify any and all persons known to you who have knowledge or facts relevant to any issue or fact regarding the incident and/or the allegations in your Complaint, and designate from among those persons whom you believe you would call as witnesses at any trial.

RESPONSE:

INTERROGATORY NO. 2: Identify the individual(s) and/or business the dog Bos was purchased or acquired from and state the following:

- a) What the original purchase price was;
- b) When the dog was purchased or acquired;
- c) Where the dog was purchased or acquired;
- d) The breed of the dog; and
- e) The reason(s) why you chose this particular breed of dog.

RESPONSE:

INTERROGATORY NO. 3: State the approximate height and weight of the dog Bos at the time of the incident.

RESPONSE:

INTERROGATORY NO. 4: Please explain Bos the dog's movements on the day of his death, and why he was not restricted or confined to Plaintiffs' property at the time of the incident, including the following specific information in your answer:

- a) If Bos the dog was at large and not restricted or confined to your property, please provide an explanation as to how this may have happened;
- b) If Bos the dog was not wearing a collar, please provide an explanation as to why or how he was without it;
- c) When and how you first discovered Bos the dog had gotten loose;
- d) What actions you took, if any, to acquire custody of the dog after such discovery.

RESPONSE:

INTERROGATORY NO. 5: The following statement was reported to have been made by Plaintiff Raul Ayala to the Scottsbluff, Nebraska, Star Herald newspaper from an article entitled "Dog owner: Officer 'murdered dog in cold blood'" dated Tuesday, September 25, 2012:

"It's my fault. I didn't latch it. Dogs accidentally get loose sometimes, but he didn't wander too far from my house."

Please explain this statement, including whether you are aware that the Village of Lyman ordinances prohibit dogs from running at large within the Village limits.

RESPONSE:

INTERROGATORY NO. 6: Describe in detail any history known to you of Bos' aggressive behaviors towards people or other animals. Please include in your response any past incidents of such behaviors, including identifying those individuals involved.

RESPONSE:

INTERROGATORY NO. 7: State whether you agree that if the dog Bos acted with aggression towards a person on the day of the incident, lawful force could be used against him by such person.

RESPONSE:

INTERROGATORY NO. 8: Please state whether Bos the dog was registered with any official breeding organization, such as the American Kennel Club, or similar dog pedigree registration process.

RESPONSE:

INTERROGATORY NO. 9: Explain the extent to which Plaintiffs' home is protected by video surveillance, including the following information:

- a) The number and position of any cameras and or microphones;
- b) The make and model of any surveillance equipment;
- c) The methods by which Plaintiffs can control the system;
- d) The methods by which video footage is recorded and reviewable by Plaintiffs;
- e) The company which the system was purchased through; and
- f) Who can monitor any such cameras or screens and from what locations.

RESPONSE:

INTERROGATORY NO. 10: Please state the reasons you employed a home surveillance system in the Village of Lyman, Nebraska. Include in such response a description of any past incidents or occurrences that prompted and/or necessitated the installation of a video surveillance system at Plaintiffs' home.

RESPONSE:

INTERROGATORY NO. 11: Please provide an itemized list of damages, with corresponding amounts sought or incurred, as otherwise demanded by your Complaint as a result of the incident.

RESPONSE:

INTERROGATORY NO. 12: Explain each and every reason or fact you rely upon to support your allegation in the Complaint that the individual who shot Bos the dog was acting as a Scotts Bluff County employee at the time of the incident. Please explain what indicators (i.e. car, uniform, badge, identification, etc.) lead you to assert he acted in his capacity as a deputy sheriff of Scotts Bluff County, Nebraska, at the time of the incident

involved in your Complaint .

RESPONSE:

INTERROGATORY NO. 13: Please provide a complete list of each and every place or person to whom or where you have published, posted, or otherwise commented publicly about this incident in which you reference the death of Bos the dog.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce a copy of any and all documents you have referred to or consulted in responding to the Answers to Interrogatories, as well as any additional documents you believe support any of your claims made in your Complaint and your damages.

RESPONSE:

REQUEST NO. 2: Please produce complete, unedited copies of any and all surveillance video footage, documents, and/or photographs of the incident that occurred on September 22, 2012. This shall include, but are not be limited to, any photos, video footage, or drawings of Bos the dog's body, his kennel, or the scene where the shooting occurred. This request shall also include all continuous video footage spanning from when the dog Bos got out of his kennel on the date of the incident all the way up to the time of his death.

RESPONSE:

REQUEST NO. 3: Produce any and all documentation concerning the dog, Bos, including but not limited to: ownership papers; receipts or cancelled check for payment of the dog; registration papers; animal training certificates; veterinary bill; rabies shots; dog tags; animal certifications; or citations issued concerning Bos.

RESPONSE:

REQUEST NO. 4: Please produce any autopsy/necropsy reports for Bos the dog regarding his death, and/or any cremation/burial documents.

RESPONSE:

REQUEST NO. 5: Produce any photos, diagrams, drawings, of Plaintiffs' house showing where security cameras were installed in September of 2012, and the direction they would have been pointed to observe activities on or near your property.

RESPONSE:

Dated this 6th day of August, 2014.

SCOTTS BLUFF COUNTY,
NEBRASKA, Defendant.

BY:

Vincent Valentino
Vincent Valentino, #14288
Brandy Johnson, #23323
CenterStone
100 N. 12th St., Suite 200
P.O. Box 84640
Lincoln, NE 68501-4640
(402) 742-9240
(402) 742-9250 (fax)
vv@windstream.net
brandy@nrmainc.info

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 6, 2014, a true and correct copy of the above and foregoing was served upon Plaintiffs' counsel in this action as follows, by placing a copy thereof duly addressed and postage prepaid in the U.S. mail:

Donald J.B. Miller
Miller Law Office
1113 Tenth Avenue
P.O. Box 15
Sidney, Nebraska 69162

BY:



Vincent Valentino, #14288